

REMARKS

Claims 1-43 are pending in the application and have been examined. Claims 1-43 have been finally rejected under 35 U.S.C. § 103(a) over Certified Marketing Services, Inc.. In light of the following remarks, reconsideration of the present application is respectfully requested.

In paragraph 5 of the Office Action, all of the claims of the present application have been rejected under § 103(a) over Certified Marketing Services, Inc. (CMS). Applicants respectfully traverse this rejection. All of the arguments presented in Applicant's previous amendment dated July 25, 2004 are incorporated by reference.

Independent claim 1 requires:

automatically determining an amount of said labor needed to perform said store activity using said store information, said product information, said labor information and said labor requirements

In response to Applicants' argument regarding the 'automatic' limitation, the Final Office states that "CMS routinely determines labor requirements, using this information to determine a program, and provides the customer with the service with online reporting." Applicants respectfully disagree. The CMS materials provided by the Office are completely silent with respect to how the amount of labor is determined and what information is used in making such a determination. There is simply no disclosure or even suggestion as to how CMS determines the labor requirement, or what information it uses, let alone how the information is collected (see below).

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On the cited page 1, sections 1 and 2, the CMS materials merely states that it provides merchandising and detailing services, not how these services are actually accomplished. In fact, CSM explicitly states that “Our account managers will work one-on-one with you, from inception through completion, in order to meet your goals.” If anything, this statement infers that CMS’s process for determining labor requirement is a case-by-case, one-on-one, customized process, just the opposite of the claimed automatic process.

On the cited page 4, section 1, again, the CMS materials indicates that its process for determining the labor requirements is a custom process, individually developed, directed and supervised by the CMS account manager. Although the Final Office Action had some question regarding the scope of the claimed term “automatically”, Applicants respectfully submit that the customized, one-on-one, labor determination process described in the CMS materials does not fall within the scope of the claimed term.

On the cited page 4, section 2, the CMS materials describes its ICAST product. As previously argued, CMS’ ICAST product performs functions that occur after the labor determination has already been performed. This post labor determination step in no way teaches or suggests the claimed automatic determination of the amount of labor required to perform the store activity. Electronic systems for performing such coordination and tracking as described with respect to the ICAST system are known in the art and admitted by the Applicants.

As further described below, the CMS material cited on pages 6 and 7 relate to the collection of marketing data by CMS and do not teach or suggest anything with respect to the determination of the amount of labor needed. Page 8 of the cited material is merely a log-in screen to the CMS system. Pages 9 and 10 of the cited CMS materials describes how the merchandiser laborer interfaces with CMS. Again, this portion of the CMS material does not teach or suggest anything with respect to the determination of the amount of labor needed. On cited page 10, CMS merely describes the types of merchandising services that it provides.

There is no disclosure or even suggestion in this section as to how CMS determines the amount of labor required for a particular job. Finally, on cited page 13, CSM describes the types of signage conversion and installation services that it performs. Again, this section of the CMS materials does not contain any disclosure of how the labor requirements for performing these functions is determined.

Applicant's second argument relates to the limitation in Claim 1 that the automated labor determination is made "using said store information, said product information, said labor information and said labor requirements." Claim 1 further requires that all of the information used in this automatic labor determination is received electronically. To reject these limitations of Claim 1, the Final Office Action primarily relies on the electronic collection of data disclosed on pages 6 and 7 of the CMS materials. Applicants respectfully submit that the data collected in this section of the CMS materials is merely used for marketing purposes and is not whatsoever in used in CMS' labor determination process. Specifically, above section 1 on page 6, CMS specifically states that "If you represent a company and would like more information regarding CMS services, please provide the information below:" Applicants respectfully submit that one skilled in the art would interpret this web page on the CMS website to merely be a tool for collecting marketing data about potential customers. There is no disclosure or even suggestion that CMS uses this information for anything other than marketing purposes. As previously argued, the type of information captured electronically on this web page by CMS system can absolutely not be used to determine the labor required as recited in independent claim 1.

As there is no teaching or suggestion in the CMS reference for "automatically determining an amount of said labor needed to perform said store activity using said store information, said product information, said labor information and said labor requirements.", withdrawal of the rejection of independent claim 1 on the basis of CMS is therefore respectfully requested.

As claims 2-18 depend from claim 1 and therefore contain all the limitations thereof, withdrawal of the rejection of these dependent claims for the reasons described above with respect to independent claim 1 is respectfully requested.

Applicants separately argue for the patentability of independent claim 19. Similar to independent claim 1, independent claim 19 requires:

determining a fair share of a total amount of labor needed to perform said store activity as a function of at least one of said store information, said product information, said labor information and said labor requirements

Applicants incorporate by reference the previous arguments that term “fair share” as is known in the merchandising industry is not the same as “fair share” is used generally with respect to labor. Furthermore, as described above with respect to claim 1, CMS does not describe electronically receiving the store information, the product information the labor information and the labor requirements such that it can make the fair share determination.

As CMS does not teach or suggest making a “fair share” determination, withdrawal of the rejection of independent claim 19 is therefore respectfully requested. Claims 20-31 depend from independent claim 19 and therefore contain the “fair share” limitation thereof. Applicants respectfully request withdrawal of the rejection of dependent claims 20-31 on the basis of the arguments above with respect to independent claim 19.

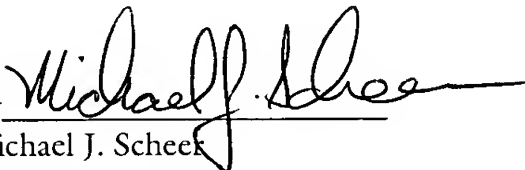
Claim 32 is a system implementation of the fair share method as described above with respect to claim 19. As the CMS system does not describe a first software module that determines the “fair share of labor”, withdrawal of the rejection of independent claim 32 is therefore respectfully requested. Dependent claims 33-43 each depend from independent claim 32 and therefore contain the “fair share” limitation thereof. Withdrawal of the rejection

of dependent claims 33-43 on the basis of the above remarks is therefore respectfully requested.

Applicants have shown that the CMS system does not describe a system for automatically determining the labor required to perform a store activity. Applicants have furthermore shown that the CMS reference does not in any way disclose, teach or suggest the determination of a "fair share" of labor required to perform the store activity. As such, Applicants respectfully submit each of the claims of the present application are patentably distinguished from the CMS reference. As each of the claims of the present application are currently in condition for allowance, such action is earnestly solicited.

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Respectfully submitted,

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